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BROOKLYN OFFICE

VIA FACSIMILE ONLY

Honorable Judge Jack Weinstein
United States District Court
Eastern District New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: **Smith v. Bryco Arms et al.**
EDNY Docket No. : 02 CV 3029 (JBW) (CLP)

Jaquione Johnson v. Bryco Arms, et al.
EDNY Docket No. : 03 CV 2582 (JBW) (CLP)

Dear Judge Weinstein:

As Your Honor is aware, this firm represents Defendant Atlantic Gun & Tackle Distributing Co., Inc. in the referenced cases. Pursuant to a scheduling conference held on March 3, 2004, the Court consolidated these cases for purposes of discovery and a liability trial, and set a trial date of September 20, 2004. We write on behalf of both defendants seeking the Court's intentions with respect to this trial date, and if not yet considered, we request an adjournment of this trial.

As this Court is familiar, the plaintiffs in these cases, as well as the City of New York in an unrelated case, served a subpoena duces tecum on the United States Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATF"). BATF subsequently moved to quash these subpoenas, and both Magistrate Judge Pollak and Your Honor denied its motion. BATF moved by way of a Petition for Writ of Mandamus to appeal this Court's Order to the Second Circuit and filed an emergency motion for a stay. The Second Circuit granted the BATF's motion for a stay, and the Petition for Writ of Mandamus is scheduled to be submitted on August 24, 2004.

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Due to the pending BATF disclosure issues, the resulting stay that is in effect, and the fact that the parties have not completed significant discovery, we requested Magistrate Judge Pollak to adjourn a discovery status conference that was set for July 23, 2004. Subsequently, Magistrate Judge Pollak adjourned the status conference to September 10, 2004. We anticipate that at the September 10, 2004 conference, the parties may have some inclination as to what the Second Circuit plans to do with BATF's mandamus petition, and therefore, we expect Magistrate Judge Pollak to outline what discovery she deems appropriate in light of the BATF appeal.

In addition to the September 20, 2004 trial date, Your Honor currently has a September 1, 2004, Pre-Trial Conference set for these cases. In light of the BATF's appeal to the Second Circuit, we respectfully request that the Court inform all parties as to whether the Court intends to adjourn both of these dates, and if so, what new dates, if any, the Court sets.

Thank you for your consideration of this matter.

Respectfully submitted,

RENZULLI, PISCIOTTI & RENZULLI, LLP



Jeffrey Malsch
JM 3694

cc: Magistrate Judge Pollak
Elisa Barnes, Esq.
Kenneth Marder, Esq.
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EDNY Docket No. : 02 CV 3028 (JBW) (CLP)

Jaquione Johnson v. Bryco Arms, et al.
EDNY Docket No. : 03 CV 2582 (JBW) (CLP)

Pages: 3
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COMMENTS:

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